



Office of Wetlands, Oceans &amp; Watersheds

## Legislative News

### Browner Unveils Clinton Clean Water Initiative

Administrator Carol Browner proudly announced the release of the Administration's proposal for the Clean Water Act Reauthorization at a February 1st press conference before a standing room only crowd in the Dirksen Senate Office Building. Joined by several key lawmakers, including Senate Environment and Public Works Committee Chairman Max Baucus (D-MT), Ranking Republican John Chafee (R-RI) and Subcommittee Chairman Bob Graham (D-FL), and House Merchant Marine Committee Chairman Gerry Studds (D-MA), the Administrator outlined the major concepts behind the Clinton Clean Water Initiative, which was well received by the Members of Congress as well as the environmental community. Reauthorization of the Clean Water Act was cited as a priority by the President in his January 25 State of the Union Address to Congress, and Chairman Baucus and Ranking Republican Chafee say that revitalizing the Act is their committee's top legislative priority.

*"Today, the Clinton Administration calls for fundamental change in the law that protects our nation's waters ... We've done the easy part by controlling pollution at the end of the pipeline. For the first time ever, we are tackling the hard part -- the control of polluted runoff, which is the biggest remaining barrier we face in keeping the nation's waters clean."*

Highlights of Administration Proposal -- Page 4

### Senate Clean Water Bill Awaits Full Committee Markup

On February 2nd, the Senate Environment and Public Works (EPW) Subcommittee on Clean Water, Fisheries and the Environment, chaired by Senator Bob Graham (D-FL), forwarded to the full EPW Committee a recently circulated redraft of S. 1114. The subcommittee deferred substantive action on the measure until full committee markup, scheduled for February 23, in order to have additional time to review the newly released Clinton Clean Water Initiative, as well as to have time to more closely examine the so-called "Graham mark." Senator Graham redrafted the original S. 1114, introduced last June by full Committee Chairman Max Baucus (D-MT) and Ranking Minority Member John Chafee (R-RI), reportedly to ease the bill's expected impact on states. (State officials are increasingly finding a sympathetic ear in the White House and in Congress to their outcries against unfunded mandates).

At press time, Title III (the nonpoint source and watershed provisions) of the Graham mark was being redrafted. While most of Title III remains unchanged from the original S. 1114, there are some modifications. The Graham mark, for example, deletes the provision in Title I that reserves an increasing percentage of the State Revolving Loan Fund (SRF) for watershed planning. Graham felt that such a set-aside would essentially coerce states into the watershed program, thus taking away the voluntary approach originally envisioned. Other noteworthy changes include a new provision granting automatic ap-

Senate Markup -- Continued on Page 3

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## Studds Wetlands Legislation Receives Interagency Review

On November 8, Congressman Gerry Studds, chairman of the House Merchant Marine Committee, introduced H.R. 3465, the Wetlands Protection and Management Act. The bill, cosponsored by Congressman Kika De La Garza (D-TX), chairman of the House Agriculture Committee, is expected to be a major factor in the upcoming Clean Water Act (CWA) reauthorization debate. According to committee staff, the bill parallels the Administration's Wetlands policy announced on August 24. The Interagency Working Group on Federal Wetlands Policy, which drafted the Administration plan, is currently reviewing the bill for consistency with the Administration proposal.

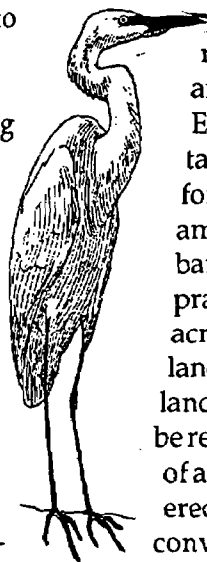
The bill adds an explicit statement to the CWA that wetlands protection and restoration is the national policy. H.R. 3465 also establishes a goal of no net loss of wetlands acres, based on current wetlands acres, functions and values. With regard to wetlands delineations, H.R. 3465 requires continued use of the 1987 Army Corps of Engineers (Corps) Delineation manual and prohibits issuance of a new manual until completion of the National Academy of Sciences' study, which is due to be released late this year. Any proposed changes to the manual would first have to be field tested and subject to a public comment period. The bill gives the Soil Conservation Service (SCS) the responsibility for making wetlands delineations on agricultural lands, and it requires a Memorandum of Agreement among SCS, EPA and the Corps within 180 days after enactment to set forth procedures to effect this change.

In terms of changes to the 404 permitting process, H.R. 3465 makes programmatic general permits available to states with existing regulatory programs. This authority would be granted on the premise that the activities permitted would have minimal individual or cumulative impacts on the environment and that the State regulatory program would provide the same level of protection as the Federal 404 program. The Corps, EPA, the United States Fish and Wildlife Service, and the National Oceanic and Atmospheric Admin-

istration (NOAA) would have the opportunity to review state permit applications and decisions. The bill also establishes expedited permitting for projects involving less than one acre. For such projects, if the Corps failed to make a decision within 60 days, the permit would automatically be approved.

The bill calls for increased monitoring and evaluation of the permitting program, and requires that the Corps, in consultation with EPA, the Department of the Interior, and SCS, issue a report to Congress every two years on the number of permits granted, withdrawn or denied, in addition to estimates on the adverse effects on the total acreage, functions and values of wetlands resulting from the issuance of both individual and general permits. Estimates of wetlands preserved or restored through mitigation, along with estimates on the rate of compliance and failure with mitigation requirements, would also be required in this biennial report.

H.R. 3465 requires that procedures be established for an administrative appeals process for penalties, delineations, and permit decisions under Section 404. In terms of permit decisions, persons adversely affected by a permit decision or third parties participating in the public comment process could appeal the issuance or denial of a permit without going to court.



The bill requires the Secretary of the Interior (acting through the United States Fish and Wildlife Service), in consultation with EPA, to issue strict regulations for the establishment, operation, monitoring and enforcement of mitigation banks. For example, under these regulations mitigation banks would have to provide, to the extent practicable, for the full replacement of the acreage, functions and values of the lost wetlands in close proximity to the impacted wetlands. Moreover, performance bonds would be required by permittees to ensure completion of a mitigation project, unless the project covered less than 5 acres or was to restore prior converted cropland.

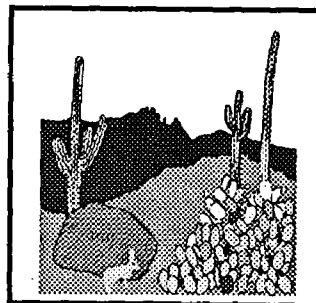
H.R. 3465 clarifies that activities such as excavation, ditching, channelization and other activities resulting in wetlands loss or degradation are covered under Section 404. The bill also exempts certain activities and lands from Section 404 permitting requirements, including 53 million acres of prior converted croplands.

The bill calls for full funding of the United States Department of Agriculture's Wetlands Reserve Program. It also specifies elements to be included in State Wetlands Conservation Plans (SWCPs) and provides that funding should be used for both the development and implementation of SWCPs.

### Biological Survey Act Passes House

After first approving a series of amendments designed to appease Members concerned about H.R. 1845's potential impact on private property rights, the House passed this legislation to formally authorize the creation of the National Biological Survey. H.R. 1845, which cleared the House on October 26, formally creates a new agency within the Interior Department charged with studying, monitoring and cataloguing the nation's plant and animal life. Interior Secretary Babbitt argues that such a baseline of data will better enable federal agencies to make the most environmentally sound decisions on managing our land and natural resources. Supporters of the legislation also feel it will be an effective tool in anticipating declines in species so that measures can be taken before they become threatened or endangered.

Despite the delay in obtaining Congressional authorization (the Senate has not yet acted on H.R. 1845), the new agency is already operating within the Interior Department thanks to a shifting of staff and resources from the United States Fish and Wildlife Service, the Bureau of Land Management, and the National Park Service. In addition, the fiscal year 1994 Interior Appropriations Bill included \$163.5 million to help fund the biological survey.



### Senate Markup -- Continued from Page 1

proval of Comprehensive Conservation and Management Plans (CCMPs) under the National Estuary Program as watershed plans under new Section 321. Also, states (or an area of a state) that have in effect a program approved pursuant to the Coastal Zone Management Act will be considered to meet the new nonpoint source requirements under the amended Section 319 program.

The Graham mark also incorporates revised portions of S. 1304, the Baucus-Chafee wetlands bill introduced last July. In his rewrite, Graham made several significant changes, including a new provision that would remove the Agency's current authority to require Federal processing of individual permits in states that have assumed the Section 404 program in circumstances where a state proposes a permit over EPA's objections. The Graham rewrite would provide only for program withdrawal if a state issues inappropriate permits. Assistant Administrator Bob Perciasepe advised the Subcommittee during the markup that he believes that such provisions would be ill-advised. The Graham mark also authorizes EPA and the Corps to make grants to states administering the 404 program in amounts corresponding to the costs to the Federal government to implement the program. Additionally, the Graham mark deletes provisions from S. 1304, which would have made localities and/or regional authorities eligible to operate the wetlands program on behalf of the Corps, including the authority to issue programmatic general permits. The Clinton Wetlands Plan endorses delegating such authority, provided there are environmental safeguards in place, such as an approved comprehensive wetlands management plan. The environmental community is generally concerned about delegating authority to local and regional authorities under Section 404, arguing that they are too susceptible to pressures from developers.

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## Highlights of the President's Clean Water Initiative

### *Nonpoint Sources*

A key feature of the Administration proposal focuses on tackling pollution from diffuse sources, including nonpoint sources, storm water and combined sewer overflows, which account for over half of remaining impairments of our waterbodies. Under the Clinton initiative, existing nonpoint sources in watersheds where water quality standards are not being met or are threatened would have to implement best available management measures or site-specific plans within seven and one-half years of enactment. If impairments continue, more stringent measures would have to be implemented within five years to meet water quality standards. Very importantly, all new nonpoint sources would have to implement these measures statewide to make sure that clean waterways stay clean.

To ensure implementation, states can use a mix of regulatory and voluntary approaches that would include enforcement authorities. State authorities would be backed by federal enforcement authorities that could be exercised if a state fails. If a state does not establish an effective nonpoint source program, nonpoint source grants would be withheld, and EPA would be authorized to establish enforceable minimum controls. The Administration proposes that federal agencies should comply with management measures in watersheds to the same extent as non-federal parties in those watersheds. To help states develop strengthened nonpoint source programs, funding would be increased from a base of \$50 million in fiscal year 93 to \$80 million in fiscal year 94 and \$100 million per year for each fiscal year from 1995 through 1998.

### *Watershed Approach*

To most efficiently and effectively address the highest remaining water resource problems, the Administration proposes that the Clean Water Act guide and reward comprehensive state watershed management programs. To be eligible for incentives, states would identify the watersheds most in need of attention—those that are im-

paired, threatened, or in need of special protection. For those watersheds, states would designate multidisciplinary, multiorganizational teams and their lead agencies. Watershed teams would be charged with establishing environmental objectives for the watershed, including water quality standards and other goals to protect important habitat such as wetlands and riparian areas. Teams would identify the highest priority problems in the watershed; develop and implement action plans to solve those problems; and revise their plans and actions, as needed. To ensure environmental progress, states would establish a schedule providing that management plans for all priority watershed are in place within 10 years of enactment and all waters are meeting environmental objectives within 15 years.

States with approved watershed programs would be eligible for several incentives, including, for example, the opportunity to tailor or target nonpoint sources controls upon demonstration to EPA that such measures would attain environmental objectives identified under the watershed plan and be backed up by adequate authorities. Other incentives would include eligibility to align the timing of permits along a watershed basis and to receive a "multi-purpose" state water grant.

### *Wetlands Protection*

Although the Clinton Wetlands plan, announced last August, is not physically attached to the 151-page Clinton Clean Water Initiative, the wetlands plan is very much a part of the Administration's position and is expected to be a key feature in the upcoming reauthorization debate. The package seeks to break the deadlock over Federal wetlands policy. Some of the highlights include:

- Embracing the goal of no overall net loss of the Nation's remaining wetlands resource base, and a long-term commitment to increasing the quality and quantity of the Nation's wetlands.
- Improving the permitting process by providing an administrative appeals process and establishing permit decision time frames.

- Eliminating duplication and inconsistency between Section 404 and the USDA's "Swampbuster" program by relying on a single agency's wetlands determination (generally, SCS on agricultural and associated lands and the Corps on other areas) for purposes of both programs. EPA, Corps, SCS, and FWS recently signed a Memorandum of Agreement to provide for this, as well as consistent methods for delineating wetlands and training personnel.

- Expanding partnerships with state, Tribal and local governments, the private sector and individual citizens to strengthen wetlands protection efforts and to build strong state and local programs.

- Clarifying the definition of "discharge of dredged material" to ensure that activities that have environmental effects of concern, such as ditching and channelization, or mechanized land clearing, will be consistently regulated.

- Clarifying in the CWA that "prior converted cropland" is not regulated under the CWA, consistent with the recent EPA/Corps rulemaking to that effect.

- Increasing funding for the Wetlands Reserve Program, including support for the Emergency Wetlands Reserve Program passed by Congress to assist flood-stricken farmers who wish to voluntarily restore wetlands on their property.

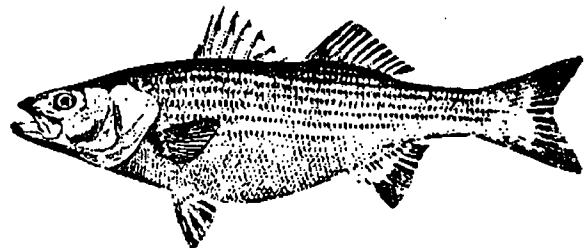
### *Comprehensive Wetlands Management Plans*

The Clinton proposal also encourages the development of comprehensive wetlands management plans, which could be developed in conjunction with the state watershed program (described above) or through specific state or local wetlands planning initiatives. Such plans would have to include an inventory and characterization of all wetland resources within the unit boundary, including an assessment of their functions and values; identification of potential wetland restoration sites; and identification of activities, programs and policies that have a direct or indirect adverse affect on wetlands. Specific wetland

goals consistent with the goals of the CWA would also be established. Upon approval by EPA, in consultation with the Corps, a comprehensive plan would become eligible for general permits, including a programmatic general permit; other measures to expedite processing under Section 404; as well as technical and financial assistance.

### *National Estuary Program*

The fact that EPA currently has no statutory authority to provide financial assistance to Management Conferences under Section 320 once a Comprehensive Conservation and Management Plan (CCMP) is developed has proven to be a major detriment to estuary programs seeking to implement approved management plans. Under Section 320, Management Conferences are required to coordinate and facilitate the implementation of the CCMP, assess its effectiveness, and review proposed Federal projects for CCMP consistency; yet, the statute provides no grant authority to support these post-CCMP activities. The Clinton Initiative proposes that Section 320 be amended to provide EPA the authority to award grants from currently available funds to support limited oversight and facilitation activities. Management conferences would be extended or reconvened for a limited time in order to conduct such oversight activities, after which states would be expected to incorporate and adopt CCMPs as watershed plans under the new proposed Section 321.



*Copies of the Clinton Clean Water Initiative can be obtained by calling EPA's Water Resources Center (contractor operated) at 260-7786. An electronic version is also being made available through the Nonpoint Source Bulletin Board and via the Global Action and Information Network Library of America Online. The Clinton Wetlands Plan can be obtained by calling the Wetlands Hotline (contractor operated) at 800-832-7828.*

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## Wayland Testifies on Soil Quality Report

On Jan. 27, OWOW Director Bob Wayland, accompanied by AWPD Director Geoff Grubbs, testified before the Senate Agriculture Conservation Subcommittee on the National Academy of Science (NAS) report, entitled, "Soil and Water Quality: An Agenda for Agriculture." The Senate panel, chaired by Senator Thomas Daschle (D-SD) also heard testimony from Dr. Sandra Batie of Michigan State University and chair of the NAS panel, and Paul Johnson, chief of the Soil Conservation Service (SCS). The purpose of the hearing was to examine whether the report's recommendations should become central tenets in our agricultural policy, as Congress prepares to reauthorize the 1990 Farm Bill, due to expire next year. In her opening remarks, Dr. Batie stressed the importance of conserving and enhancing soil quality, and she recommended that soil quality be given the same attention in national policy as air and water.

*"Protecting soil quality is the first step toward protecting water quality. . . High quality soils can prevent water pollution by absorbing and partitioning rainfall and by breaking down agricultural, chemical wastes and other potential pollutants."*

*Dr. Sandra Batie*

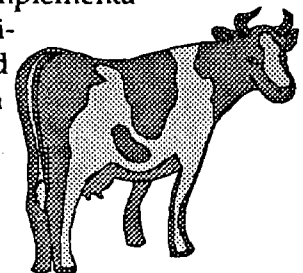
Dr. Batie summarized the conclusions of the report and highlighted the following opportunities to improve soil and water quality:

- Using fertilizers, pesticides, and irrigation water more efficiently to prevent pollution at its source.
- Increasing the ability of farming systems to resist soil erosion.
- Using field and landscape "buffer zones" such as vegetation strips, livestock fences, and constructed wetlands, to reduce runoff.

Dr. Batie also discussed the importance of using new technologies and data collection to target

problem areas. She said current agricultural policies have been a major barrier in changing the ways farmers behave. While incentives will help to encourage farmers to produce in a more environmentally sound manner, she said long-term policy goals should be independent of price support, supply control or income support mechanisms. Paul Johnson echoed Dr. Batie's remarks and discussed how SCS and EPA are working together to address problems on an ecosystem basis. In some areas, he noted, erosion is not the greatest threat, but instead it is salinization, compaction, acidification and loss of biological activity. He mentioned several steps SCS is taking including: 1) incorporating the buffer zone concept into SCS field manuals and guides; 2) moving toward performance standards in the SCS Conservation Management System; 3) continuing to work with EPA to develop better standards to evaluate farms; and 4) continued research into economically viable cropping systems.

Bob Wayland gave the Soil and Water report high marks, calling it a "timely and excellent" report and noted its relevance for the upcoming Clean Water Act and Farm Bill reauthorizations. Wayland discussed how EPA is working closely with the United States Department of Agriculture (USDA) and SCS to address many of the chief problems identified in the report. He explained that nutrient management (including both fertilizer application and manure management); pest management (including the promotion and demonstration of integrated pest management practices), irrigation management; erosion control and riparian barriers are major components of the CWA Section 319 program. Wayland emphasized that many measures can be implemented in a cost-effective manner, and that, in some cases, savings from reduced inputs offset the cost of implementation. He expressed confidence that continued progress can be made in addressing environmental degradation, while maintaining the economic vitality of American agriculture.



The Senate panel generally supported the report's recommendations, and Chairman Daschle called it "right on target" in its emphasis on soil quality and a systems approach. The Senators were, however, particularly interested in whether the report advocated mandatory controls on agricultural practices. Dr. Batie acknowledged that there might be circumstances where voluntary measures would fail to achieve the necessary water quality results desired by Congress, but she said that the report did not elaborate on when or what mandatory controls should be implemented. Wayland added that Administrator Browner stated in previous Senate testimony that voluntary approaches should be relied upon as the strategy of first choice. He explained, however, that if water quality impairments continue after an initial round of voluntary measures, more stringent measures would have to be adopted. He noted that many states already have adopted enforceable policies to cover certain activities, such as animal feeding and dairy operations.

The Senators also questioned witnesses on the report's projected impact on farm profitability; timber harvesting and other activities in buffer zones; and farm commodity programs. In answering a question about wetlands policy, Wayland was surprised to learn that the Senate panel was unfamiliar with the President's wetlands policy announced last August. Senator Larry Craig (R-ID) was particularly pleased to learn about the recently signed the Memorandum of Agreement with USDA, which he called "a major breakthrough."

### **EPA-Cabinet Bill Stalls in the House**

Legislation to elevate EPA to Cabinet level, which passed the Senate last May, stalled again in the House of Representatives. The bill, H.R. 3425, which was originally scheduled for House consideration last November and postponed, has encountered a surge of unexpected opposition due to disagreement over whether the new Department should be required to conduct comparative risk and costs-benefits analyses of environmental regulations. (A similar amendment offered by Senator Bennett Johnston (D-LA) was approved

by the Senate last May). On February 3, 227 Members of Congress joined together to oppose the rule governing debate on the bill - essentially killing consideration of the bill and sending it back to the Rules Committee.

Congressman John Mica (R-FL), joined by Minority Whip Newt Gingrich (R-GA), lead the charge against H.R. 3425 because the Rules Committee disallowed his cost-benefit amendment and other minority proposals. The Rules Committee, which only allowed nine amendments for floor debate, will likely be forced to allow consideration of the Mica amendment, and possibly others, in order to gain majority approval of the rule.

H.R. 3425 redesignates the EPA as the Department of Environmental Protection (DEP) and transfers all of EPA's existing functions, responsibilities and authorities to the new department. The bill establishes three new offices under the new Department, including a new Bureau of Environmental Statistics, charged with coordinating data collection efforts; a new Office of Environmental Justice, charged with addressing concerns that low-income and minority populations are disproportionately exposed to pollutants and polluting facilities; and a new Office of Environmental Risk, charged with developing a strategy to attain, to the greatest extent practicable, reductions in risk to human health and the environment using available resources.

Unlike the Senate, the House chose not to address the highly charged issue of abolishing the Council of Environmental Quality (CEQ) in the Cabinet legislation. President Clinton has proposed elimination of the Council in favor of a smaller White House Office that will oversee compliance with environmental laws, including the National Environmental Policy Act. The House has chosen to address this issue in separate legislation, H.R. 3512, which it passed by voice vote on November 20. H.R. 3512 would essentially abolish CEQ as it is now configured, while statutorily reserving its key duties and functions as responsibilities of the White House. It authorizes \$4.7 million over four years for the smaller White House staff.

*Cabinet Legislation -- Continued on Page 8*

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## Safe Drinking Water Bills Introduced

Reauthorization of the Safe Drinking Water Act (SDWA), which formally expired on September 30, 1991, has emerged as a top environmental priority in the 103rd Congress. The outbreak of intestinal disease in Milwaukee last year and the recent advisories issued in the Washington, D.C. area have focused national attention on the safety of drinking water supplies.

In September, the Administration released its recommendations for SDWA reauthorization, which feature a State Revolving Loan Fund (SRF); watershed protection; user fees that states could charge to raise revenues for compliance costs; streamlined and strengthened enforcement measures; improvements to the standards setting process; and enhanced training and certification for systems operators.

Watershed protection is strongly emphasized in the Administration's package, which calls for the development and implementation of Source Water Protection Programs for both ground and surface waters. The program would build upon so-called "baseline" programs, and would include a delineation of all drinking water protection areas; an assessment of the susceptibility of the water supply to contamination from significant sources or categories of sources located within drinking water protection areas; and public education initiatives. States could also adopt an "enhanced" local Source Water Protection Program, which would build upon the base program, but include more detailed source inventories and related vulnerability assessments, enforceable controls, state oversight of implementation of controls, and a process to periodically update the program. In return, states would be offered incentives such as alternative monitoring requirements and prevention-based treatment exemptions.

Although the EPA appropriations bill for Fiscal Year 1994 provides \$599 million for a safe drinking water SRF, Congress must first authorize the program before the money will be appropriated. Several reauthorization bills have been introduced in the House and Senate, including a comprehensive

measure by Senate Environment and Public Works Chairman Max Baucus, S. 1547. S. 1547 may be marked up as early as February or March. The Baucus bill establishes an SRF for the construction of drinking water facilities; establishes flexible maximum contaminant levels (MCL) standards; streamlines enforcement; creates a multi-media radon requirement; establishes a Best Available Technology requirement for small systems; and establishes a pollution prevention program. The bill's provisions to provide some relief for state and localities from testing and monitoring standards, which many localities argue are too onerous and costly, have, however, raised concerns at EPA that the bill could delay compliance for small systems for as long as 10 years.

### *Cabinet Legislation -- Continued from Page 7*

The Senate version of the Cabinet legislation, S.171, which passed on May 4 (see Spring Legislative News) would, however, eliminate CEQ. Therefore, House and Senate negotiators will have to reconcile this issue and other differences if the bill reaches conference. During Senate debate, Senator Bond (R-MO) offered an amendment to shift responsibility for identifying wetlands and making decisions on agricultural lands from the Army Corps of Engineers (Corps) to the Soil Conservation Service. Senator John Breaux (D-LA) agreed not to support this amendment in return for the creation of an interagency task force to study wetlands regulation, including Swampbuster and Section 404. The Senate ultimately passed a substitute amendment offered by Senator Baucus that would have required the Secretaries of the Environment, Agriculture, Interior and Army to make a recommendation back to Congress on the proposed jurisdictional change within 90 days after the bill's enactment. However, this amendment is no longer relevant in light of the recently signed Memorandum of Agreement (MOA) among EPA, Corps, the United States Fish and Wildlife Service, and the Department of Agriculture to coordinate wetlands decisions.